SUPREME COURT, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-295

JANE DOE, *et al.*,

Petitioners,

against

PETER BRENNAN, SECRETARY OF LABOR, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR STATE RESPONDENTS IN OPPOSITION

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Respondents
Levine, Ostrow and Senior
Two World Trade Center
New York, New York 10047

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

IRVING L. ROLLINS
JUDITH A. GORDON
Assistant Attorneys General
Of Counsel

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Petitioners,

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Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR STATE RESPONDENTS IN OPPOSITION

The State respondents oppose the petition for a writ of certiorari to review the decision of the Court of Appeals for the Second Circuit, dated May 1, 1973. That decision affirmed the opinion and order of the United States District Court for the Southern District of New York, dated June 7, 1972, refusing petitioners' application to convene a three-judge court and dismissing the Complaint for want of a substantial federal question.

Opinions Below

The opinion of the Court of Appeals is reported at 478 F. 2d 537 and reproduced in the Appendix to the Petition at pp. 1a-7a. The opinion and order of the District Court are reported at 344 F. Supp. 964 and reproduced in the Appendix to the Petition at pp. 8a-14a.

Jurisdiction

The petitioners rely on 28 U.S.C. § 1254(1) in support of the jurisdiction of this Court.

Questions Presented

1. Whether the lower courts correctly found that petitioners' constitutional claims were insubstantial in light of this Court's summary affirmance in *Romero* v. *Hodgson*, 403 U.S. 901 (1971)?

2. Whether recent decisions of this Court require that *Romero* v. *Hodgson, supra,* be re-examined?

State Statutes Involved

Petitioners have placed the following state statutes in issue: New York Unemployment Insurance Act, N.Y. Labor Law § 511(6)(a); New York Minimum Wage Act, N.Y. Labor Law §§ 651(5)(b), 671(6) and 673; New York Workmen's Compensation Law § 201(6)(A); and the New York "Little Wagner Act", N.Y. Labor Law § 701(3). These provisions are set forth in the Appendix to this Brief together with N.Y. Labor Law §§ 511(1), 671(1), (2) and N.Y. Workmen's Compensation Law §§ 2(4), 3(1) and group 14-b.

Statement of the Case

This action was commenced in May of 1972 by nine migrant agricultural laborers who are alleged to work in the Eastern "migrant stream".* Their relationship with the State of New York is alleged to be their annual participation in the harvest of the apple crop in upstate Ulster County from August through October (Compl't ¶¶ "2(a)"-"2(i)"). They have proceeded under fictitious names and on behalf of themselves and others similarly situated.**

The Complaint consists of six causes of action. Five challenge separate federal and state ameliorative legislative plans. Of these claims, three (the First, Fourth and Fifth Causes of Action) proceed on the theory that the failure to include migrant agricultural laborers within the protections of the legislation both improperly distinguishes between agriculture and other forms of labor and perpetuates racial classifications in violation of petitioners' Fifth and Fourteenth Amendment rights.***

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* The Complaint defines the Eastern "migrant stream" as an "agricultural belt extending from Northern Florida, through Virginia, North Carolina and Maryland, to New Jersey and New York" (Compl't ¶ "4").

** Both the federal and state respondents argued below that the failure to disclose the identity of any of the plaintiffs at the commencement of the action made the Complaint a nullity. *Roe* v. *State of New York*, 49 F.R.D. 279 (S.D.N.Y. 1970). This ground for dismissal was not reached by the District Court (Petitioners' Appendix, p. 14a n. 7) or the Court of Appeals (Petitioners' Appendix, pp. 3a-4a and n. 3).

*** The First Cause of action challenges the omission of agricultural laborers from federal and state unemployment insurance plans, 26 U.S.C. § 3306(c)(1), (k) and N.Y. Labor Law § 511(6)(a) (Compl't ¶¶ "8"-"11"). The fourth Cause of Action challenges the alleged exclusion of agricultural laborers from the State workmen's compensation plan, N.Y. Workmen's Compensation Law

(footnote continued on following page)

Two claims (the Second and Third Causes of Action argue that the limited minimum wage and social security protection afforded migrant agricultural laborers as distinguished from other forms of labor violates petitioners' rights under the Fifth and Fourteenth Amendments.*

The Sixth and concluding Cause of action alleges that the "cumulative effect" of the enumerated legislative plans on migrant agricultural labor is "blatantly violative" of petitioners' fundamental rights and amounts to State imposed peonage in violation of the Fifth, Thirteenth and Fourteenth Amendments (Compl't ¶ "36"). Throughout the litigation, petitioners have placed their principal emphasis on this Cause of Action, repeatedly characterizing the legislation as reflective of a "conscious societal decision" to exclude migrant labor from the "entire spectrum of American social legislation" (e.g., Petition, p. 13).

Contrary to the position taken by the petitioners in their Fourth Cause of Action, New York does not exclude migrant agricultural laborers from coverage under the State's workmen's compensation plan. Since 1967, employer-farmers have been obliged to participate in the mandatory program if they paid cash remuneration for farm labor aggregating more than $1,200 in the preceding calendar year.

(footnote continued from preceding page)

§ 201(6)(A) (Compl't ¶¶ "25"-"27"). The Fifth Cause of Action is directed against the National Labor Relations Act §§ 7 and 8(a), 29 U.S.C. §§ 157, 158(a) if construed as inapplicable to concerted activities by agricultural laborers and against the agricultural exemption of the State Labor Relations Act, N.Y. Labor Law § 701 (Compl't ¶¶ "28"-"35").

* The Second Cause of Action challenges the minimum wage provision for agricultural laborers set by the Fair Labor Standards Act, 29 U.S.C. § 213(a)(5), (6), and the State Minimum Wage Standards for Farm Workers, N.Y. Labor Law, Art. 19-A (Compl't ¶¶ "12"-"21"). The Third Cause of Action challenges the qualification requirements for agricultural laborers under the Social Security Act, 42 U.S.C. § 409(h)(2) (Compl't ¶¶ "22"-"24").

N.Y. Workmen's Compensation Law § 3, subd. 1, group 14-b, added by c. 646 of the Laws of 1966.

Section 201(6)A of the Workmen's Compensation Law, upon which petitioners rely, refers exclusively to the State's Disability Benefits Law. This law was adopted in 1949 (c. 600 of the Laws of 1949) as a private, contributory insurance program intended to provide benefits to employees for "sickness and disability *not incurred in their employment*". (Emphasis added.) *Matter of Knapp* v. *Syracuse University*, 308 N.Y. 274, 278 (1955) (citing Governor Dewey's memorandum of approval). The program has continued down to date without tax support. Individual employees contribute up to $0.30 weekly; employers contribute the balance. The program is administered by the Workmen's Compensation Board and its staff.

In 1969, New York extended minimum wage protection to agricultural workers. N.Y. Labor Law Art. 19-A added by c. 552 of 1969. The minimum wage was established at $1.40 per hour, effective October 1, 1969 and at $1.50, effective February 1, 1971 N.Y. Labor Law § 673.* It is applicable to all employers who meet the $1,200 payroll standard, N.Y. Labor Law § 672. The legislation contains extensive provisions for monitoring the wage rate and investigating and regulating conditions of agricultural labor. N.Y. Labor Law § 674, *et seq.*

The Industrial Commissioner has promulgated specific protective regulations concerning piece-work rates and fees for food and lodging, two areas which the petitioners consider as unregulated sources of abuse by employers and farm labor contractors (Complt. ¶¶ "6", "16", "21" and

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* "Hours worked" includes "time spent on a single farm in going from one field to another, or in waiting for baskets, pickup or for similar purposes." • • • [T]ime not worked because of weather conditions is excluded. N.Y. Labor Law § 674. See also 12 N.Y.C.R.R. § 190-39..

Petition, p. 6). Piece work rates are deemed to comply with the minimum wage only if they yield "not less than the basic minimum hourly rate to 80 percent of the total number of piece rate employees engaged in the same kind of work, for the same employer * * * provided that the average hourly earnings of all such employees is not less than the basic minimum hourly rate". 12 N.Y.C.R.R. § 190-3.1. Allowances, including food and lodging may be considered as part of the minimum wage subject to limitations on valuation and quality.* N.Y. Labor Law § 671 subd. 5. A meal may not be valued at more than 55¢; rooms may not be valued at more than 65¢ daily; and houses and apartments may not be valued at more than $1.30 per person or $2.60 per unit for multiple occupancy, or at more than the fair rental value. 12 N.Y.C.R.R. § 190-2.2. Meals must be nutritious and include portions of fruits or vegetables, proteins and grains or starch. 12 N.Y.C.R.R. § 190-4.7. Lodgings must meet generally accepted standards for protection against fire and all applicable state and local laws, codes, regulations and ordinances. 12 N.Y.C.R.R. § 190-4.8.

The New York State Unemployment Insurance Law is not applicable to agricultural workers, golf caddies and baby sitters, among other categories of labor. N. Y. Labor Law § 511, subds. 6(a), 8 and 12. The New York State Labor Relations Act is not applicable to agricultural workers and domestics, among other categories of labor. N. Y. Labor Law § 701, subd. 3. Petitioners do not allege that New York State or any of its agencies or political subdivisions has taken or threatened to take any action to restrain organizational activity by or on behalf of agricultural workers.

The District Court found petitioners' claims insubstantial in light of this Court's summary affirmance in *Romero*

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* Lodging allowances may not be considered as part of the minimum wage for seasonal agricultural workers. 12 N.Y.C.R.R. § 190-2.2(b).

v. *Hodgson,* 403 U.S. 901 (1971) aff'g 319 F. Supp. 1201 (N.D. Calif. 1970) and dismissed the complaint *sua sponte.* The Court of Appeals for the Second Circuit affirmed. Both courts rejected petitioners' efforts to distinguish *Romero* on the grounds that the case at bar involved the cumulative effect of several statutory plans; that the varied pattern of protection of migrant workers resulted in discrimination against minorities; and that, for either or both reasons, a strict equal protection test was applicable (Petitioners' Appendix, pp. 12a-14a, 6a-7a).

ARGUMENT

1. The lower courts properly afforded controlling effect to this Court's summary affirmance in *Romero* v. *Hodgson,* 403 U.S. 901 (1971).

Less than one and one-half years ago this Court affirmed the district court's order of dismissal in *Romero* v. *Hodgson,* 403 U.S. 901 (1971) aff'g 319 F. Supp. 1201 (N.D. Calif. 1970). *Romero* rejected an equal protection challenge to federal and state unemployment compensation plans which excluded agricultural workers relying on this Court's decisions in *Carmichael* v. *Southern Coal Co.,* 301 U.S. 495 (1937); *Steward Machine Co.* v. *Davis,* 301 U.S. 548 (1937); *Helvering* v. *Davis,* 301 U.S. 619 (1937). The principal issue in the case at bar is identical with that decided in *Romero.**

It is well-settled that summary affirmances by this Court are decisions on the merits and thus properly considered as precedents. *Ohio ex rel. Eaton* v. *Price,* 360 U.S. 246, 247 (1959); *United States ex rel. Epton* v. *Nenna,*

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* In 1970, the Fifth Circuit found that a challenge to the farm labor exclusion of the National Labor Relations Act substantial enough to require hearing by a three-judge court. *Local Union No. 300* v. *McCulloch,* 428 F. 2d 396 (5th Cir. 1970). However, this decision became "obsolete" following *Romero* (Petitioners' Appendix, p. 12 n. 4).

446 F. 2d 363, 366 (2d Cir. 1971) cert. den. 404 U.S. 948 (1971); *Heaney* v. *Allen,* 299 F. Supp. 1300; 1300, 1302 n. 1 (E.D.N.Y. 1969) aff'd 425 F. 2d 869 (2d Cir. 1969); Stern and Gressman, Supreme Court Practice 197 (4th ed. 1969). Only denials of certiorari and affirmances by an equally divided court are without precedential value. *Brown* v. *Allen,* 344 U.S. 443 (1953); *Atlantic Coast Line R. Co.* v. *Powe,* 283 U.S. 401 (1931); *Neil* v. *Biggers,* —— U.S. ——, 41 U.S.L.W. 4064 (12/6/72); *United States ex rel. Radich* v. *Criminal Court,* 459 F.2d 745 (2d Cir. 1972) cert. den. sub. nom. *Ross* v. *Radich,* —— U.S. ——, 41 U.S.L.W. 3376 (1/9/73).

There is no genuine conflict on these principles among circuits which would warrant plenary consideration by the Court. See Petition, pp. 8-9. In *Dillenberg* v. *Kramer,* 469 F. 2d 1222 (9th Cir. 1972), the Ninth Circuit found an equal protection challenge to state constitutional and statutory provisions denying voting rights to unpardoned felons was sufficient to warrant consideration by a three-judge court. The state officials' argument that the issue had been previously decided by this Court's summary affirmance in *Beacham* v. *Braterman,* 396 U.S. 12 (1969), aff'g 330 F. Supp. 182 (S.D. Fla. 1969) and by *Green* v. *Board of Elections of the City of New York,* 380 F. 2d 445 (2d Cir., 1967), cert. den. 389 U.S. 1048 (1967), was rejected. In reaching this result, the Court of Appeals first expressed its view that summary affirmances should be accorded "little precedential significance," but then proceeded to rely on the alternative proposition that regardless of the "weight" of *Beacham* and *Green* as precedents, they were not controlling because of subsequent developments in the voting rights area. 381 F. Supp. 1225-1226. Cf. *Dunn* v. *Blumstein,* 405 U.S. 330 (1972). See also *Serrano* v. *Priest,* 487 P. 2d 1241, 1264-1266 (Cal. Sup. Ct. 1971), following the same form of argument.

Gibson v. *Berryhill,* —— U.S. ——, 36 L.Ed. 2d 488 (May 7, 1973), does not support the petitioners' view that sum-

mary affirmances are not to be afforded controlling significance. In that case, Mr. Justice White, speaking for the majority, was confronted with the problem of determining whether the Court's summary affirmance in *Geiger* v. *Jenkins*, 401 U.S. 985 (1971), was controlling. His reference at the outset of his discussion to summary affirmances as "somewhat opaque", 36 L.Ed. 2d at 498, does not pertain to their quality as precedents but simply refers to the fact in the absence of a full opinion it is difficult to determine the basis of a given decision and thus its appropriate application as precedent. Justice White resolved this difficulty by analyzing the facts and issues in *Geiger* as presented in the record of the case and comparing them with those presented in *Gibson*. The same analytical procedure was followed herein with respect to the *Romero* affirmance. Both lower courts found that the principal unemployment compensation issue presented in the case at bar had been presented and decided in *Romero*. The district court noted that petitioners' claim that the agricultural exclusion now had a discriminatory effect because of an alleged change in the racial make-up of the working force had also been presented and decided in *Romero* (Petitioners' Appendix, p. 13a).

Petitioners urge the alternative position that even if *Romero* is afforded precedential significance, it is not controlling because different or broader claims are raised herein (Petition, pp. 12-14). The argument rests on the theory that the first five Causes of Action of the Complaint may be combined, characterized as a "systematic exclusion of migrant agricultural laborers from a broad range of social legislation" and then contrasted with *Romero* which challenged only a "single agricultural exclusion" (Petition. p. 13). The argument is both legally unsound and factually inaccurate.

The legal aspect of the argument erroneously assumes that two or more legislative programs each valid if con-

sidered separately may be considered anew and invalidated if challenged in the same complaint. Thus, petitioners would argue that if the agricultural exemption in the unemployment insurance program sustained in *Romero, Carmichael* and *Steward Machine Co.* were challenged in the same action with the agricultural exemption in the social security program as sustained in *Helvering* v. *Davis,* 301 U.S. 619, 646 (1936), a new question would be presented and a different judicial result obtain. The district court rejected this approach, stating:

> "[T]he court perceives it no sound basis for reconsidering . . . a recent decision of the Supreme Court following the thus far settled course of judging statutes singly, with an eye to their distinct rationales and asserted justifications, for purposes of constitutional tests." (Petitioners' Appendix, p. 13a)

The Court of Appeals was of the same view:

> "[W]e cannot in good conscience hold that . . . the presence of four federal statutes under attack instead of one . . . justifies our disregarding *Romero.*" (Petitioners' Appendix, p. 7a).

With respect to the particular state legislation in issue, we have already noted that there is no "systematic exclusion" as petitioners allege. See pp. 4-6, *ante.* Both workmen's compensation and minimum wage protection have been extended to agricultural workers. N.Y. Workmen's Compensation Law § 3 subd. 1, group, 14-b; N.Y. Labor Law Art. 19-A.

After careful study, New York adopted a $1,200 payroll standard for both programs and, as of now $1.50 minimum wage. As is apparent, the legislation is not limited to "agribusiness" but includes many small farm operations. However, in providing this extensive coverage, the Legislature continued to recognize the special problems of farming

enterprises which have traditionally supported differences in statutory protections afforded industrial workers as distinguished from agricultural workers. In its "Statement of Public Policy" in support of the Minimum Wage Standards for Farm Workers, the Legislature stated in part (N.Y. Labor Law § 670):

> "The legislature hereby finds that the establishment of minimum wage standards for farm laborers involves distinct and unusual problems; that the agricultural labor force is made up of regular all-year workers as well as short-term seasonal workers; that although some workers are paid on an hourly basis, many are paid on a piecework, weekly, monthly, or other basis; and that the agricultural industry is particularly affected by weather and market conditions and by perishability of products. Accordingly, the legislature further declares that it is the purpose of this act to provide a flexible approach with full consideration of the unusual problems involved."

Accord, *Carmichael* v. *Southern Coal Co., supra* at 512-513; *Steward Machine Co.* v. *Davis, supra* at 583-585; *Helvering* v. *Davis, supra* at 646; *Romero* v. *Hodgson,* 319 F. Supp. *supra* at 1202-1203.

The only state legislative plans in issue which in fact exclude agricultural workers are the unemployment insurance program [N.Y. Labor Law § 511(a)(b)] and the "Little Wagner" Act [N.Y. Labor Law § 701(3)]. As noted the exclusion in the former program was specifically considered in *Romero, Carmichael* and *Steward Machine Co.* together with the special problems occasioned by protective legislation for farming enterprises. Labor relations problems were considered in *National Labor Relations Board* v. *Edward G. Budd Mfg. Co.,* 169 F. 2d 571 (6th Cir. 1948) cert. den. sub nom. *Foreman's Assn. of America* v. *Edward G. Budd Mfg. Co.,* 335 U.S. 908 (1949).

While either or both those programs may soon extend their coverage to certain agricultural workers (e.g. Brief of Federal Respondents, Appendix B), it is apparent that such action is peculiarly within the province of the Congress and state legislatures and that neither body is obliged to provide complete solutions to the problems of the migrant worker. *McDonald* v. *Board of Election Commissioners,* 394 U.S. 802, 809 (1969). It is only in those forums that the economic and administrative viability of such legislation can be appropriately studied and the competing interests of the farm employer and worker adjusted. As this Court has long recognized, Congress, in providing for three-judge courts, did not intend to authorize the examination of legislative judgments on the practicability and timeliness of social change. *Phillips* v. *United States,* 312 U.S. 246, 251 (1941).

2. Recent decisions of this Court do not provide any basis for reconsidering *Romero* v. *Hodgson, supra.*

Petitioners urge that recent developments in the law of equal protection require that *Romero* be re-examined. They argue in substance that the Court should adopt a new equal protection test falling somewhere between "compelling state interest" and "reasonable relationship" to a legitimate state interest (Petition, pp. 14-15). Alternatively, they argue that if the two-tier standard is retained, the more relaxed "reasonable relation" test applied in *Romero* is inappropriate to the case at bar (Petitioners' Appendix, pp. 6a-7a).

The Court has repeatedly acknowledged the appropriateness of the traditional "reasonable relation" test to equal protection challenges against economic and social legislation. *San Antonio Independent School District* v. *Rodriguez,* —— U.S. ——, 36 L.Ed. 2d 16 (1973); *Jefferson* v. *Hackney,* 406 U.S. 535 (1972); *Richardson* v. *Belcher,* 404 U.S. 78 (1971); *Dandridge* v. *Williams,* 397 U.S. 471 (1970).

Any doubt about the application of the test when important governmental benefits are in issue was resolved in *San Antonio, supra.* There the Court ruled that the social importance of a service performed by the state was not the criterion of the compelling state interest test, but only whether the right involved was "explicitly or implicitly guaranteed by the Constitution." 36 L.Ed. 2d *supra* at 43.

Unemployment insurance and similar ameliorative programs are neither "explicit" nor "implicit" constitutional guarantees, and accordingly cannot be characterized as "fundamental rights" for equal protection purposes regardless of how many programs are considered in a single complaint (Petitioners' Appendix, pp. 7a, 12a-13a). Similarly the allegation of racially discriminatory effect, already considered in *Romero,* is insufficient to warrant consideration of the legislation in issue as "suspect classifications" (Petitioners' Appendix, p. 14a).

To the extent that commentators and the lower courts have considered a third equal protection test, this Court has not followed suit. Notably, in commenting on this point below, the Court of Appeals cited cases decided in the Second Circuit prior to *San Antonio, supra,* wherein this Court continued its adherence to the two-tier standard (Petitioners' Appendix, p. 7a).

Reference to *Goosby* v. *Osser,* 409 U.S. 512 (1973), does not assist petitioners. As the courts below properly found, the relevant issues had been rendered insubstantial by prior decisions of this Court. With respect to the alleged additional claim that petitioners' right to travel was infringed by the challenged legislation, the District Court stated (Petitioners' Appendix, p. 13a): "Apart from the fact that the new argument does not appear to be a powerful one, the rendering of such additional points does not warrant re-examination by a District Court of a precedent that is squarely controlling in terms of its result." The

state respondents submit that District Court's disposition of the right to travel claim is consistent with a finding of insubstantiality under *Goosby, supra,* at 518-519. Moreover, even brief examination of the claim shows it to be frivolous. Far from having their freedom of travel limited by the State of New York, petitioners in fact enter the State annually to earn portions of their livelihood at destinations of their choice. That legislative programs may vary from state to state does not give rise to a right to travel claim. A contrary view would render the Tenth Amendment meaningless.

CONCLUSION

The petition for a writ of certiorari should be denied.

November 26, 1973.

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Respondents
Levine, Ostrow and Senior
Two World Trade Center
New York, New York 10047

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

IRVING L. ROLLINS
JUDITH A. GORDON
Assistant Attorneys General
Of Counsel

APPENDIX

The New York Unemployment Insurance Act states in pertinent part:

N. Y. Labor Law § 511. *Employment*

1. General definition. "Employment" means any service under any contract of employment for hire, express or implied, written or oral.

* * *

6. Agricultural labor. (a) The term "employment" does not include agricultural labor.

The New York Minimum Wage Act states in pertinent part:

N. Y. Labor Law § 651. *Definitions*

* * *

5. "Employee" includes any individual employed or permitted to work by an employer in any occupation, but shall not include any individual who is employed or permitted to work: (a) in service as a part time baby sitter in the home of the employer; or someone who lives in the home of the employer for the purpose of serving as companion to a sick, convalescing or elderly person, and whose principal duties do not include housekeeping; (b) *in labor on a farm;* (c) in a bona fide executive, administrative or professional capacity; etc. * * * (Emphasis added.)

The New York Minimum Wage Standards for Farm Workers states in pertinent part:

N. Y. Labor Law § 671. *Definitions*

As used in this Article [19-A]:

1. "Farm" includes stock, dairy, poultry, fur bearing animal, fruit and truck farms, plantations, or-

chards, nurseries, greenhouses, or other similar structures, used primarily for the raising of agricultural or horticultural commodities.

2. "Employee" includes any individual employed or permitted to work on a farm but shall not include: (a) domestic service in the home of the employer; (b) the parent, spouse, child or other member of the employer's immediate family; etc. * * *

* * *

6. "Hours worked" means the time that a farm worker is permitted to work in the fields or at his assigned place of work, and shall include time spent on a single farm in going from one field to another, or in waiting for baskets; pick up, or for similar purposes; provided, however, that time not worked because of weather conditions shall not be considered as hours worked.

§ 673. *Minimum Wage*

Every employer shall pay to each of his employees a wage of not less than:

$1.40 on and after October 1, 1969

$1.50 on and after February 1, 1971

for each hour worked, or such other wage as may be established in accordance with the provisions of this article.

The New York Labor Relations ("Little Wagner") Act states in pertinent part:

N. Y. Labor Law § 701. *Definitions*

When used in this article [20]:

* * *

3. The term "employees" includes but is not restricted to any individual employed by a labor organi-

zation; any individual whose employment has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment; * * * but shall not include any individual employed by his parent or spouse or in the domestic service of any person in his home, or any individuals employed only for the duration of a labor dispute, or *any individuals employed as farm laborers*, etc. * * * (Emphasis added.)

The New York Disability Benefits Law states in pertinent part:

N. Y. Workmen's Compensation Law § 201. *Definitions*
As used in this Article [9]

* * *

6. A. "Employment" means employment in any trade, business or profession except that the following shall not be deemed employment under this article: services performed for the state, a municipal corporation, local government agency, other political subdivision or public authority; * * * *service farm laborers;* casual employment and the first forty-five days of extra employment as employees not regularly in employment as otherwise defined herein; service as golf caddies; * * * (Emphasis added.)

The New York Workmen's Compensation Law states in pertinent part:

§ 2. *Definitions*

As used in this chapter,

* * *

4. "Employee" means a person engaged in one of the occupations enumerated in section three * * * The term "employee" shall not include . . . the spouse or minor child under the age of eighteen years of

an employer who is a farmer unless the services of such spouse or minor child shall be engaged by said employer under an express contract of hire, nor shall it include farm laborers except as provided in Group Fourteen-b of section three of this chapter. If a farm labor contractor recruits or supplies farm laborers for work on a farm, such farm laborers shall for the purposes of this chapter be deemed employees of the owner or lessee of such farm.

• • •

§ 3. *Application*

1. Hazardous employment compensation shall be payable for injuries or death incurred by employees in the following employments:

• • •

Group 14-b. Employment as a farm laborer as provided herein. A farmer shall provide coverage under this chapter for all farm laborers employed during any part of the twelve consecutive months beginning April first of any calendar year preceded by a calendar year in which cash remuneration paid to all farm laborers aggregated twelve hundred dollars or more.

CERTIORARI DENIED